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29129 7590 06/12/2009 MICHELLE A. ZARINELLI C/O WEST CORPORATION 11808 MIRACLE HILLS DR. MAIL STOP: W11-LEGAL OMAHA, NE 68154				
EXAMINER				
PARKER, BRANDI P				
ART UNIT		PAPER NUMBER		
3624				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

MAZARINELLI@WEST.COM

### Office Action Summary

**Application No.**

10/812,857

**Applicant(s)**

COX ET AL.

**Examiner**

BRANDI P. PARKER

**Art Unit**

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/2/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 12/31/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Acknowledgements***

1. The following is a Final Office action in response to communications filed on 3/02/2009. Claims 1-62 are pending. Claims 1, 9, 17, 26, 34, 39, 46, 57, 61 and 62 have been amended.

### ***Response to Applicant's Remarks***

2. In response to Applicant's argument that Examiner lacked an objective reason to combine the teachings of the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art to include the business system of O'Brien with the ability to incorporate an attendance module as taught by Lakritz since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. Furthermore, pursuant to 35 U.S.C. 102(e), Lakritz qualifies as a proper 102(e) reference and is thus available as a reference to support a 35 U.S.C. 103(a) rejection.

3. Applicant's arguments with respect to amended claims 1, 9, 17, 26, 34, 39, 46, 57, 61 and 62 with respect to the claims rejections under 35 U.S.C. 102(e) and 103(a) have been considered but are moot in view of the new ground(s) of rejection that is provided below.

4. Applicant's amendments to claims 17, 26, 34 and 39 are not sufficient to overcome the rejection of the claims under 35 U.S.C. 101. The limitations failed to tie the provided method steps to another statutory class such as a particular machine or apparatus. Whether a method appropriately includes particular machines to qualify as a section 101 process may not always be a straightforward inquiry. As *Comiskey* recognized, "the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter." *In re Comiskey*, 499 F.3d 1365, 1380 (Fed. Cir. 2007), (citing *In re Grams*, 888 F.2d 835, 839-40 (Fed. Cir. 1989)). In other words, nominal or token recitations of structure in a method claim should not convert an otherwise ineligible claim into an eligible one. *Ex parte Langemyr* (BPAI 2008-1495, 2008). Furthermore, a database can be defined by one with ordinary skill as a collection of records or files, and not necessarily tied to a particular machine or apparatus. Therefore, the rejection of claims 17-48 under 35 U.S.C. 101 is sustained.

5. Original claims 61 and 62 contained the subject matter and claim limitations for the method disclosed in claim 39. The original claims 61 and 62 differ in the addition of

the means for and the program storage device embodying a program of instructions executable by the machine to perform the method that is similar to the method disclosed in claim 39. Thus, original claims 61 and 62 were rejected under 35 U.S.C. 103(a) under the same rationale provided for in the rejection of claim 39.

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 17-48 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

8. In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter.

Claims 17, 26, 34 and 39 are directed towards methods for modifying employee schedules. As the claims are not sufficiently tied to an apparatus, such as a computer,

and/or do not transform the underlying subject matter (from your claim) to a different state, the claimed method is non-statutory and therefore rejected under 35 U.S.C. 101.

9. Claims 18-25, 27-33, 35-38, 40-45 and 47-48 are rejected for being dependent upon rejected claims 17, 26, 34 and 39 respectively.

***Examiner's Notes***

10. The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 46 and 48 rejected under 35 U.S.C. 102(b) as being anticipated by O'Brien (US 6587831).

13. With respect to claim 46, O'Brien teaches a method comprising:

- a. for a first employee, assigning a first input at least one shift start time and at least one shift stop time for each of one or more work days based on the particular needs of the employer or the desires of the employee or the employee status representing violation data in an employee violations sub-database into the scheduling database (column/line 6/5-17, regarding modifying start and end times);
- b. for a second employee, assigning at least one shift start time and at least one shift stop time for each of one or more work days based on the particular needs of the employer or the desires of the employee or the employee status representing violation data in an employee violations sub-database into the scheduling database (column/line 6/5-17, regarding modifying start and end times); and
- c. for a plurality of other employees, assigning as a plurality of nth inputs at least one shift start time and at least one shift stop time for each of one or more work days based on the particular needs of the employer or the desires of the employee or the plurality of other employee's status in an employee violations sub-database into the scheduling database and determining an output, including work shifts for the first employee, the second employee and for the plurality of other employees, based on the first input on the second input and on the plurality of nth inputs. (column/line 6/5-17, regarding modifying start and end times);

d. wherein said start times and stop times for said first, said second and said plurality of other employees are not confined to predefined work shifts (column/line 6/5-17, regarding modifying start and end times).

14. Regarding claim 48, O'Brien teaches wherein said predefined work shifts start and stop at generally the same time (column/line 6/5-17, regarding modifying start and end times).

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien (US 6587831).

17. As to claim 47, O'Brien teaches the method of Claim 46. It is old and well known in the art to divide a 24-hour work operation into 3-8 hour shifts. Thus, the division of the day into three 8-hour shifts is a predictable result of the O'Brien system.



18. Claims 1-3, 6-11, 15, 17-24, 26, 31-38, 49-51, and 57-60 rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien (US 6587831) in view of Dodd et al (US 2005/0102154).

19. With respect to claim 1, O'Brien teaches a system for maintaining and distributing a work schedule, the system comprising at least the following:

- e. a schedule generator configured to generate work schedule data for a plurality of workers (column/line 4/40-44, regarding the schedule of shifts), on a worker by worker basis and further configured to;

- i. access an employee data sub-module, wherein the employee data sub-module provides an interface for a manager to establish a data record on a plurality of employees, wherein the employee data sub-module communicates with at least a database interface software to establish and/or modify an employee data record (column/line 4/12-28, regarding employee data);

- ii. access an employee schedule entry sub-module comprising a software configuration that is executable via the employee schedule generator, the employee schedule sub-module communicates with at least the database interface software to establish and/or modify an employee schedule record (column/line 4/40-59, regarding the schedule generator);
- and

f. at least one employee interface positioned at least one location within a work environment, wherein said at least one employee interface is in communication with said schedule generator and is configured to display work schedule data (column/line 6/18-34, regarding display of schedule information).

O'Brien does not directly teach and employee violations module. However, Dodd teaches

iii. access an employee violations sub-module comprising a software configuration that is executable from the schedule generator, wherein the employee violations sub- module provides an interface for the manager to define employee violations in a workplace system, the employee violations sub-module communicates with at least the database interface software to obtain and/or record information on an employee's schedule record and the employee data record (paragraph 0170-171, regarding human resource manager flagging employee for employee misconduct resulting in employee suspension, affecting information on an employee's schedule and data record).

It would have been obvious to one of ordinary skill in the art to include the business system of O'Brien with the ability to implement an employee violations module as taught by Dodd since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function

as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

20. Regarding claim 2, O'Brien further teaches, wherein said work schedule data comprises data regarding employee work schedules that are not generated around one or more predetermined work shifts (column/line 6/44-51, regarding altering business parameters and adjusting schedule accordingly).

21. As to claim 3, O'Brien further teaches including a display monitor configured to display work schedule data to a plurality of workers (column/line 6/18-34, regarding display of schedule information).

22. As to claim 6, O'Brien further teaches including a remote user interface in communication with said database to facilitate access by a remote user (column/line 1/35-41, 2/16-33 regarding network and host computers throughout the distributed network).

23. With respect to claim 7, O'Brien further teaches wherein said employee interface comprises a networked computer having software to facilitate access to said work schedule data (column/line 1/35-41, 2/16-33 regarding network and host computers throughout the distributed network).

24. Regarding claim 8, Dodd further teaches wherein said employee interface further includes a printer (paragraph 0091, regarding view and print reports option)

25. As to claim 9, O'Brien teaches a system to distribute a work schedule to a work force and allow for modifications to said work schedule, the system comprising at least the following:

- g. at least one data storage device adapted to store data representing the work schedule, the work schedule including at least one recurring shift defined independently of anticipated workload (column/line 4/64-5/1, regarding the schedule data store);

- h. at least one computing device in communication with said data storage device to organize, oversee distribution, and modify said data representing the work schedule (column/line 4/40-44, regarding the schedule of shifts); and

- i. at least one kiosk located remotely from said computing device, said kiosk in communication with said computing device to provide an interface for given workers to view their work schedules and to propose changes to their work schedules (column/line 6/18-34, regarding display of schedule information at stations).

O'Brien does not directly teach and employee violations module. However, Dodd teaches:

j. at least one employee violations sub-module in communication with the data storage device and in communication with the computing device to obtain and/or to modify said data representing the work schedule according to the at least one employee violations sub-module (paragraph 0170-171, regarding human resource manager flagging employee for employee misconduct resulting in employee suspension, affecting information on an employee's schedule and data record);

It would have been obvious to one of ordinary skill in the art to include the business system of O'Brien with the ability to implement an employee violations module as taught by Dodd since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

26. With respect to claim 10, O'Brien further teaches wherein said at least one kiosk includes a display and user interface software (column/line 6/18-34, regarding display of schedule information).

27. Regarding claims 11,19 and 33, O'Brien teaches including an computing device to display schedule information to a plurality of workers (column/line 6/18-34, regarding display of schedule information). O'Brien in view of Dodd does not directly teach using

an overhead display to show schedule information. However, overhead display systems are old and well known in the art and using a different display mechanism does not affect the functionality of the disclosed system. Thus, using an overhead display monitor would be a predictable result of the O'Brien in view of Dodd system.

28. As to claim 15, O'Brien further teaches wherein said kiosk comprises a networked computer having software configured to provide an employee interface (column/line 6/18-34, regarding display of schedule information).

29. Regarding claim 17, O'Brien teaches:

- k. storing data representing the work schedules in a database (column/line 4/64-5/1, regarding the schedule data store);
- l. enabling at least some of the employees to access the data, via at least a second input, representing their respective work schedules via at least one terminal located within a workplace (column/line 6/18-34, regarding display of schedule information for employee access);
- m. creating at least one proposed modification of the work schedule data to adjust a staffing level for at least one shift to compensate for at least one variation in anticipated workload (column/line 3/28-38, regarding schedule modification based on forecasted workload);

- n. transmitting the output, the proposed modification, determined by the first input and at least a second input, to the terminal for review by the given employees (column/line 6/18-34, regarding display of schedule information); and
- o. enabling at least one of the employees to accept the proposed modification at least at the terminal (column/line 7/32-38, regarding posting of shift schedule for employee review).

O'Brien does not directly teach and employee violations module. However, Dodd teaches:

- p. creating at least one employee violations sub-database, via a first inputs, in communication with the database to delete and/or to modify the work schedule according to the at least one employee violations sub-database (paragraph 0170-171, regarding human resource manager flagging employee for employee misconduct resulting in employee suspension, affecting information on an employee's schedule and data record);

It would have been obvious to one of ordinary skill in the art to include the business system of O'Brien with the ability to implement an employee violations module as taught by Dodd since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

30. As to claim 18, O'Brien further teaches wherein enabling at least one of the given employees to accept the proposed modification includes enabling the given employees to perform at least one of signing up to work additional hours and signing up to work fewer hours (column/line 9/17-26, regarding increasing or decreasing shift availability).

31. Regarding claim 20, O'Brien teaches further including: establishing a pool to which employees may post shifts that are available for trade; enabling employees to post shifts to said pool; enabling employees to accept shifts from said pool; and modifying the work schedules based, at least in part, upon acceptance of shifts from the pool (column/line 6/52-7/10, regarding bulletin system for the employee recipient group).

32. As to claim 21, O'Brien teaches the method of Claim 20, wherein establishing a pool includes storing a listing in the database of proposed shift changes posted by employees (column/line 6/52-7/10, regarding bulletin system for the employee recipient group).

33. With respect to claim 22, O'Brien teaches displaying shifts posted to the pool on a display adapted for viewing by a plurality of employees (column/line 6/52-7/10, regarding bulletin system for the employee recipient group).

34. Regarding claim 23, O'Brien teaches enabling at least one of the given employees to accept the proposed modification includes enabling the give employees



to accept the proposed modification via at least one of an overhead display monitor and a kiosk (column/line 3/9-17 and 6/18-36, regarding employee station and interface)

35. As to claim 24, O'Brien teaches modifying said employee schedules in response to an employee signing-up for said opportunities for employees to modify their work schedule; and storing said modified schedules in said database (column/line 7/5-17, regarding modification of work schedules).

36. Regarding claim 26, O'Brien teaches: creating a sheet having at least one slot defined for a given work shift; transmitting said sheet for viewing by a plurality of employees via a system computing device; receiving an input via a sign-up to a slot on said sheet by a signing-up employee; and upon detecting the input via the sign-up to said sheet: accepting and/or denying said sign-up onto said sheet based on the output; modifying said sheet to reflect said sign-up; and modifying said signing-up employee's schedule to reflect said sign-up and presenting the output on an employee computing device (column/line 6/52-7/10, regarding bulletin system for the employee recipient group to sign up electronically for shift modifications and view schedule modifications).

O'Brien does not directly teach an employee violations module. However, Dodd teaches:

- q. determining an output based on the input and based on determining whether the signing-up employee is listed in an employee violations sub-database

to decline, accept and/or to modify the signing-up employee work shift according to the employee violations sub- database (paragraph 0170-171, regarding human resource manager flagging employee for employee misconduct resulting in employee suspension, affecting information on an employee's schedule and data record);

It would have been obvious to one of ordinary skill in the art to include the business system of O'Brien with the ability to implement an employee violations module as taught by Dodd since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

37. Regarding claim 31, O'Brien further teaches wherein transmitting includes showing said sheet only to employees qualified to work the work shift listed on said sheet (column/line 7/27-29, regarding verifying employee has permission to work the shift).

38. As to claim 32, O'Brien further teaches closing said sheet when all slots are filled 15 due to sign-ups (column/line 6/47-51, regarding completion of schedule generation when conditions are filled).

39. With respect Claim 34, O'Brien teaches creating a proposed shift trade, said proposed shift trade including at least posting employee shift information regarding shift hours and shift date into a database; posting said proposed shift trade to a shift pool, said shift pool configured to accept an input into the database regarding responses to said posting from other employees; displaying said shift pool to a plurality of other employees; monitoring said shift pool for an output response from at least one responding employee to accept said proposed shift trade; wherein said output response is determined by the proposed shift trade information input into the database; and whereby upon receiving said response, said method accepts said response; updates the work schedules of said posting employee and said responding employee; and removes said proposed shift trade from said shift pool (column/line 6/52-7/10, regarding employee bulletin system and 8/53-9/16, regarding employee shift swapping).

O'Brien does not directly teach an employee violations module. However, Dodd teaches a system that:

- r. determines whether said response received is subject of an employee violations record and not available to accept said response (paragraph 0170-171, regarding human resource manager flagging employee for employee misconduct resulting in employee suspension, affecting information on an employee's schedule and data record).

It would have been obvious to one of ordinary skill in the art to include the business system of O'Brien with the ability to implement an employee violations module

as taught by Dodd since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

40. As to claim 35, O'Brien further teaches wherein said shift pool comprises a listing of proposed shift trades that can be viewed by employees seeking to modify their schedule (8/53-9/16, regarding employee shift swapping).

41. Regarding claim 36, O'Brien further teaches wherein said posting allows other employees to view and sign- up for said proposed shift trade (8/53-9/16, regarding employee shift swapping).

42. With respect to claim 37, O'Brien further teaches, further including the block of displaying to an employee on an employee interface only the proposed shift trades that said employee on an employee interface is qualified to perform (column/line 7/27-29, regarding verifying employee has permission to work the requested shift).

43. As to claim 38, O'Brien further teaches wherein creating a proposed shift trade comprises;

- s. logging onto said scheduling system at an employee interface; and selecting which shift hours of a proposed shift trade said posting employee desires to post (8/53-9/16, regarding employee shift swapping)
44. With respect to 49, O'Brien teaches a scheduling apparatus comprising:
- t. means for creating a schedule for each of a plurality of employees (column/line 4/40-44);
  - u. means for storing said schedule as schedule data (column/line 4/64-51);
  - v. means for allowing said employees to view said schedule data at a remote location (column/line 2/16-33);
  - w. means for retrieving said schedule data from said means for storing (column/line 6/18-34); and
  - x. means for displaying said schedule data to at least one of said employees at said remote location (column/line 6/18-34).

O'Brien does not directly teach and employee violations module. However, Dodd teaches:

- y. means for monitoring employee attendance and/or workplace rule infractions at a remote location and storing as employee violation data (paragraph 0170-171, regarding human resource manager flagging employee for

employee misconduct resulting in employee suspension, affecting information on an employee's schedule and data record);

It would have been obvious to one of ordinary skill in the art to include the business system of O'Brien with the ability to implement an employee violations module as taught by Dodd since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

45. As to claim 50, O'Brien teaches the scheduling apparatus of Claim 49. Printing items displayed on an interface is old and well known in the art. Thus printing the schedule provided in O'Brien constitutes a predictable result that would have been obvious to one with ordinary skill in the art.

46. With respect to claim 51, O'Brien teaches the scheduling apparatus of Claim 49 where employees can modify their schedules (column/line 7/7-17). O'Brien does not directly teach a request from the employer to modify the schedule. However, system in O'Brien through the employee bulletin system is capable of allowing an employer to request the employee to modify the schedule. Therefore, a request to employees to modify their schedules as specified on said sheet is a predictable result of the O'Brien system.

47. With respect to claim 57, O'Brien teaches said computer usable medium comprising: computer program code logic configured to store schedule data on a storage medium,

z. wherein said schedule data comprises the work schedules of a plurality of employees (column/line 4/64-51);

aa. computer program code logic configured to monitor for requests for said employee data from employees (column/line 6/18-34, regarding display of schedule information);

bb. computer program code logic configured to transmit said employee data to said employee interface (column/line 6/18-34, regarding display of schedule information);

cc. computer program code logic configured to allow for establishment of at least one sheet containing slots for employees to sign-up for additional or reduced hours (column/line 9/17-26)

dd. computer program code logic configured to display said at least one sheet to at least one employee (column/line 6/18-34, regarding display of schedule information); and

ee. computer program code logic configured to accept employee sign-up to said at least one sheet (column/line 6/18-34, regarding display of schedule information);.

O'Brien does not directly teach and employee violations module. However, Dodd teaches:

ff. computer program code logic configured to monitor respective employee violations of said employees at employee interfaces and computer program code logic configured to store employee violations data on a storage medium, wherein said employee violations data comprises one or more infractions of a set of workplace rules and/or obligations (paragraph 0170-171, regarding human resource manager flagging employee for employee misconduct resulting in employee suspension, affecting information on an employee's schedule and data record).;

It would have been obvious to one of ordinary skill in the art to include the business system of O'Brien with the ability to implement an employee violations module as taught by Dodd since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

48. Regarding claim 58, O'Brien further teaches wherein said storage medium comprises a hard disk drive (column/line 4/64-51).



49. As to claim 59, O'Brien further teaches including computer program code logic configured to allow a posting employee to post proposed shift trades to a shift pool (8/53-9/16, regarding employee shift swapping)..

50. With respect to claim 60, O'Brien teaches further including computer program code logic configured to display said shift pool so that employees other than posting employees can view said proposed shift trades and sign-up to work shifts in said shift pool of proposed shift trades (8/53-9/16, regarding employee shift swapping).

51. Claims 4-5, 12-14, 16, 25, 27-30, 39-45, 52-56, 61-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien (US 6587831) and Dodd et al (US 2005/0102154) and in further view of Lakritz et al (US 2005/0137925).

52. With respect to claim 4, O'Brien in view of Dodd teaches the system of Claim 1. O'Brien in view of Dod does not directly teach an attendance module. However, Lakritz teaches an attendance module configured to utilize said work schedule data and data regarding which workers are present in the work place for a given shift to define data representing worker attendance, and configured to provide the data representing the worker attendance to the schedule generator (paragraph 0706-0712, regarding the attendance module).

It would have been obvious to one of ordinary skill in the art to include the business system of O'Brien and Dodd with the ability to incorporate an attendance

module as taught by Lakritz since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

53. Regarding claim 5, Lakritz further teaches the system of Claim 4, wherein the schedule generator is adapted to generate at least further schedule data in response to the data representing worker attendance (paragraph 0706-0712, regarding the attendance module).

54. As to claim 12, Lakritz further teaches an interface with an activity monitoring device that is in communication with said computing device and that is adapted to determine whether at least one worker at a place of work (paragraph 0706-0712, regarding the attendance module that can track activity).

55. With respect to claim 13, Lakritz further teaches including an interface with an activity monitoring device in communication with said computing device to monitor the activity of a worker at a place of work (paragraph 0706-0712, regarding the attendance module).

56. Regarding claim 14, Lakritz further teaches wherein said activity monitoring device includes an electronic time clock (paragraph 0706-0712, regarding the attendance module).

57. With respect to claim 16, Lakritz further teaches an attendance module adapted to compare, for at least one given shift, a number of employees scheduled to work during the given shift to a number of employees present during the given shift, and wherein the attendance module is further adapted to route data resulting from the comparison to the computing device, and wherein the computing device is adapted to initiate at least one modification to at least one work schedule for at least a further shift, subsequent to the given shift, in response to the comparison (paragraph 0024, 0057, 0486).

58. With respect to claim 25, Lakritz further teaches the method of Claim 17, wherein creating at least one proposed modification includes posting at least one sheet that is created in response to a comparison between a number of employees scheduled to work a given shift and a number of employees actually working the given shift paragraph 0024, regarding scheduling based on employee's seniority).

59. As to claim 27-29, O'Brien teaches an electronic sign-up page (column/line 6/52-7/10). Further adapting the sign-up page to support the fluctuation of workers does not further limit the functionality of the claimed invention. MPEP 2106 II C.

60. With respect to claim 30, Lakritz further teaches wherein creating a sheet includes creating the sheet in response to a comparison between a number of employees scheduled to work a given shift and a number of employees actually working the given shift (paragraph 0710, regarding substitute assignments for absent employees).

61. Regarding claims 39, 56, 61 and 62, O'Brien teaches a method comprising at least the following:

gg. obtaining at least a first input including employee schedule data from at least one scheduling system, said employee schedule data representing a number of employees scheduled to work a given shift (column/line 4/53-59, regarding assigned employees to a shift);

O'Brien does not directly teach and employee violations module. However, Dodd teaches

hh. monitoring said employee status of violation data in an employee violations sub-database and employee status in an employee violations sub-database (paragraph 0170-171, regarding human resource manager flagging employee for employee misconduct resulting in employee suspension, affecting information on an employee's schedule and data record); and

O'Brien does not directly teach obtaining data on employees that actually worked. However Lakritz teaches:

- ii. obtaining a second input including employee status data representing a number of employees actually at work during at least part of the given shift (paragraph 0706-0709, regarding attendance and activity tracking module);
- jj. comparing the at least a first input including said employee schedule data and the at least second input including said employee status data to determine an output as established based on the received first input and received second input, the output including a difference there between comparison (paragraph 0024, 0057, 0486, regarding scheduling based on attendance, 0712, regarding attendance statistics);
- kk. routing the output data representing the difference to the scheduling system comparison (paragraph 0712, regarding attendance statistics); and
- ll. employing the data representing the difference as at least one input in modifying further schedule data applicable to at least one further shift that occurs subsequently to the given shift (paragraph 0024, 0057, 0486, regarding scheduling based on attendance).

It would have been obvious to one of ordinary skill in the art to include the business system of O'Brien in view of Dodd with the ability to obtain data on employees that actually worked taught by Lakritz since the claimed invention is merely a

combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

62. With respect to claim 40, O'Brien further teaches wherein obtaining employee schedule data comprises polling a database to obtain schedule data created by the scheduling system (column/line 4/53-59, regarding assigned employees to a shift);

63. As to claim 41, O'Brien further teaches further comprising storing data representing the difference (column/line 4/64-51).

64. Regarding claim 42, Lakritz further teaches wherein obtaining employee status data comprises interfacing with a network computer system to determine which employees are utilizing the network computer system (paragraph 0706-0712, regarding attendance and activity tracking module).

65. With respect to 43, Lakritz further teaches comprising communicating the data representing the difference to a component related to tracking attendance violations (paragraph 0706-0709, regarding attendance and activity tracking module).

66. As to claim 44, Lakritz further teaches wherein comparing includes determining a number of employees at work during the given shift but not scheduled to work during

the given shift (paragraph 0706-0709, regarding attendance and activity tracking module).

67. Regarding claim 45, Lakritz further teaches wherein comparing includes determining a number of employees scheduled to work the given shift but not at work during the given shift (paragraph 0706-0709, regarding attendance and activity tracking module).

68. Regarding claim 52. Lakritz further teaches wherein the means for posting is adapted to post the sheet in response to a difference detected between a number of employees scheduled to work a given shift and a number of employees actually working the given shift (paragraph 0706-0709, regarding attendance and activity tracking module).

69. As to claim 53. O'Brien further teaches further including means for posting employee- initiated shift trade requests for viewing and sign-up by said one or more employees (8/53-9/16, regarding employee shift swapping).

70. With respect to claim 54. Lakritz further teaches further including means for comparing schedule data representing a number of employees who are scheduled to work a given shift with worker status data representing employees who are actually

working the given shift (paragraph 0706-0709, regarding attendance and activity tracking module).

71. Regarding claim 55, Lakritz further teaches further comprising means for posting at least one sheet for acceptance by the employees, wherein the posting means is responsive to the comparing means (paragraph 0706-0709, regarding attendance and activity tracking module).

### ***Conclusion***

72. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

73. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



74. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

75. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley B. Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

76. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Bradley B Bayat/  
Supervisory Patent Examiner, Art Unit 3624